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ATTORNEY FOR PLAINTIFF
UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

UNITED STATES OF AMERICA,	CR 17-144-BLG-DLC
Plaintiff,	
vs.	OFFER OF PROOF
MARLON DONNELL HOWARD,	
Defendant.	

The United States of America, represented by Assistant United States Attorney Thomas K. Godfrey, files its offer of proof in anticipation of the change of plea hearing set in this case on April 17, 2018.

THE CHARGE

The defendant, Marlon Donnell Howard, is charged by indictment with conspiracy to possess with intent to distribute oxycodone, in violation of 21 U.S.C. § 846 (Count I) and possession with intent to distribute oxycodone, in violation of 21 U.S.C. § 841(a)(1) (Count II).

PLEA AGREEMENT

There is a plea agreement in this case. Howard will plead guilty to Count II of the indictment. The United States will move to dismiss Count I at the time of sentencing, if the Court accepts the plea agreement. The plea agreement filed with the Court represents, in the government's view, the most favorable offer extended to the defendant. See *Missouri v. Frye*, 566 U.S. 134 (2012).

ELEMENTS OF THE CHARGE

In order for Howard to be found guilty of Count II, possession with intent to distribute oxycodone, in violation of 21 U.S.C. § 841(a)(1), the United States must prove each of the following elements beyond a reasonable doubt:

First, the defendant knowingly and unlawfully possessed oxycodone; and

Second, the defendant intended to distribute the oxycodone.

PENALTY

The charge contained in Count II carries a maximum penalty of 20 years

imprisonment, a \$1,000,000 fine, three years of supervised release, and a \$100 special assessment.

ANTICIPATED EVIDENCE

If this case were tried in United States District Court, the United States would prove the following:

In May of 2016, agents with the Drug Enforcement Administration and Eastern Montana HIDTA received information from a confidential source (CS) that Kevin Welch, Sheila Ayala, and Jenny Francois were trafficking prescription pills from California into Montana. The CS stated that Welch would travel from California to Montana every two to three weeks to bring the CS pills. The CS stated that he/she first received approximately 50-60 pills and that the amount of pills the CS received quickly increased to approximately 1200 pills each trip. The CS estimated that Welch had made approximately fourteen trips between October of 2015 and May of 2016 to bring the CS pills. The CS then distributed the pills to the defendant Marlon Howard in Billings for further re-distribution. Howard paid the CS, who in turn gave the proceeds to Welch. The CS gave agents 800 30mg Oxycodone pills and 141 4mg Dilaudid pills that he/she had obtained from Welch.

On May 19, 2016, a confidential source purchased Oxycodone from Howard at his residence. After the purchase, agents conducted a traffic stop on Howard and searched his person and his vehicle. They found approximately 98 Oxycodone pills and \$3,390 in U.S. currency. Agents executed a search warrant on Howard's residence and found an additional 245 Oxycodone pills. During an interview, Howard admitted to receiving 300 pills at a time and selling them for \$40 per pill.

DATED this 6th day of April, 2018.

KURT G. ALME
United States Attorney

/s/ Thomas K. Godfrey
THOMAS K. GODFREY
Assistant U.S. Attorney